

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Juan A. Pena,

Civil No. 05-2181 (DWF/FLN)

Petitioner,

v.

ORDER AND MEMORANDUM

United States of America,

Respondent.

Juan A. Pena, *Pro Se*, Petitioner.

James E. Lackner, Assistant United States Attorney, United States Attorney's Office, counsel for Respondent.

This matter is before the Court upon Petitioner's objections to Magistrate Judge Franklin L. Noel's Report and Recommendation dated September 20, 2005, recommending that Petitioner's application for leave to proceed *in forma pauperis* be denied and Petitioner's application for habeas corpus relief under 28 U.S.C. § 2241 be dismissed for lack of jurisdiction.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.1(c). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner's objections (Doc. No. 5) to Magistrate Judge Franklin L. Noel's Report and Recommendation dated September 20, 2005, are **DENIED**.
2. Magistrate Judge Franklin L. Noel's Report and Recommendation dated September 20, 2005 (Doc. No. 3), is **ADOPTED**.
3. Petitioner's application for leave to proceed *in forma pauperis* (Doc. No. 2) is **DENIED**; and
4. Petitioner's application for habeas corpus relief under 28 U.S.C. § 2241 (Doc. No. 1) is **DISMISSED** for lack of jurisdiction.

Dated: October 26, 2005

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court

MEMORANDUM

The Court has adopted the Report and Recommendation of Magistrate Judge Franklin L. Noel. However, the Court's decision should not be construed as its approval of the so-called "fast track" programs around the country. In fact, the Court has denied every motion for a downward departure or

variance based upon the existence of so-called "fast track" programs around the country since the District of Minnesota does not have such a program.

Petitioner's petition for habeas corpus relief under 28 U.S.C. § 2241 (Doc. No. 1) is dismissed for lack of jurisdiction.

D.W.F.